Levine Blaszak Block & Boothby LLP

March 16, 2006

EX PARTE NOTICE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition of Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160 from Title II and *Computer Inquiry* Rules with Respect to Their Broadband Services, WC Docket No. 04-440

Dear Ms. Dortch:

The AdHoc Telecommunications Users Committee ("AdHoc") urges the Commission to deny the petition captioned above seeking de-regulation of Verizon's special access services.

The members of AdHoc are among the nation's largest and most sophisticated corporate buyers of telecommunications services; the Committee counts among its members eleven of the "Fortune 100" and sixteen of the "Fortune 500" companies. Members come from a broad range of economic sectors (including chemical, automotive, and aerospace manufacturing; banking and financial services; personal and business insurance; retail sales; package delivery; transaction processing, data management, and other information services) and maintain tens of thousands of corporate premises in every region of the country. Their combined spend on communications products and services is well over two billion dollars per year. As substantial, geographically-diverse end users of telecommunications service nation-wide, AdHoc members are uniquely qualified to provide a credible, unbiased, and informed perspective on the state of competition in telecommunications markets.

AdHoc admits no carriers as members and accepts no carrier funding. AdHoc members therefore have no commercial self-interest in imposing unnecessary regulatory constraints on incumbent service providers. As a consequence, AdHoc is a long-standing supporter of forbearance authority for the FCC and has advocated de-regulation for telecommunications services as soon as the market for a service becomes competitive. Indeed, as high-volume purchasers of telecommunications services, AdHoc members have historically been among the first beneficiaries of the FCC's de-regulatory efforts.

Verizon's special access market is not competitive

Despite its long-standing and enthusiastic support for de-regulation of competitive markets, AdHoc has consistently opposed carrier efforts to eliminate special access regulation because special access services, including Verizon's, simply are not yet available on a competitive basis. AdHoc (as well as a broad range of other customers dependent on special access) has made this point repeatedly, and supported it with probative and credible evidence, in multiple filings with the Commission.[1] Indeed, the protests and complaints of special

[1] *See, e.g.,* Comments of AdHoc Telecommunications Users Committee (Jan. 22, 2002) at 2-3, *filed in Performance Measurements and Standards for Interstate Special Access Services*, CC Docket Nos. 01-321, 00-51, 98-147, 96-98, 98-141, 96-149, 00-229, Notice of Proposed Rulemaking, 16 FCC Rcd 20896 (2001) ("*Performance Standards rulemaking*"); Comments of AdHoc Telecommunications Users Committee (Mar. 1, 2002) at 14-17, *filed in Review of Regulatory Requirements for Incumbent LEC Broadband Services; SBC Petition for Expedited Ruling That It Is Non-Dominant in its Provision of Advanced Services and for Forbearance From Dominant Carrier Regulation of These Services,* CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001) ("*Broadband Regulation Rulemaking")*; Reply Comments of AdHoc Telecommunications Users Committee (Jul. 1, 2002) at i, *filed in Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket Nos. 02-33, 95-20, and 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) ("*Wireline Broadband Internet Access Rulemaking*"); Comments of AdHoc Telecommunications Users Committee (Dec. 2, 2002) at 5, *filed in AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM No. 10593 ("*AT&T Special Access Rulemaking Petition*"); Comments of AdHoc Telecommunications Users Committee (Jun. 30, 2003) at 6, *filed in Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, and *2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003) ("*ILEC Separate Affiliate Dominant/Non-Dominant Rulemaking* "); Reply Comments of AdHoc Telecommunications Users Committee (September 23, 2004) at 3-14, *filed in Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, FCC 05-170 (rel. Dec. 2, 2005) ("*Qwest Omaha Forbearance Petition* ");Reply Comments of AdHoc Telecommunications Users Committee (May 24, 2005) at pp. 8-23, *filed in Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75 ("*Verizon/MCI Merger Proceeding*"); Comments and Reply Comments of AdHoc Telecommunications Users Committee (June 13, 2005 and July 29, 2005), *filed in Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) ("*Special Access Rulemaking*"); Comments of AdHoc Telecommunications Users Committee (February 22, 2006), *filed in Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunset Pursuant To 47 U.S.C. § 160*, WC Docket No. 05-333 ("*Qwest § 272 Forbearance Petition*").

access users like AdHoc, which culminated in the filing of a mandamus petition with the D.C. Circuit,[2] led the Commission to initiate only last year the *Special Access Rulemaking*[3] to re-visit the Commission's failed experiment with de-regulation through "pricing flexibility" rules.[4] AdHoc's Comments and Reply Comments in that proceeding demonstrated that competition has failed to emerge for Verizon's special access services. Those pleadings have been appended as Attachments 1 and 2 to this letter for inclusion in the record of this proceeding.[5] As AdHoc pointed out in its Reply Comments,

> [n]o serious observers of this marketplace – from state public utility commissions to CLECs to IXCs to wireless carriers to end users – have been able to identify any competitive entry, market forces, or pricing behavior that remotely resembles the competitive landscape painted so insistently by the BOCs….The BOCs' dogged persistence in asserting that, despite all factual evidence to the contrary, special access is nevertheless 'robustly' competitive is extraordinary, particularly since they have supported their assertions only with speculation and theoretical musings as to how markets *should* respond to the kind of market power they wield.[6]

And, as AdHoc observed in its *Special Access Rulemaking* Comments:

> [i]n the real-world marketplace where enterprise customers search for competitively-priced telecom services, rhetoric and speculation are no substitute for actual competitive alternatives. The marketplace experience of enterprise customers like the members of Ad Hoc is entirely inconsistent with the rosy competitive picture painted by the

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[2] *In re* AT&T Corp., *et al*, No. 03-1397 (D.C. Cir.), *dismissed as moot*, Feb. 4, 2005. The court's dismissal was based on the Commission's initiation of the *Special Access Rulemaking,* note 1, *supra.*

[3] *Special Access Rulemaking,* note 1, *supra.*

[4] 47 C.F.R. §§ 69.701 *et seq.*

[5] Attachments A (a white paper entitled "*Competition in Access Markets: Reality or Illusion. A Proposal for Regulating Uncertain Markets*") and B (a declaration updating the white paper to reflect subsequent BOC filings) to the Ad Hoc Comments appear as Attachments 3 and 4 to this letter.

[6] Attachment 2, Reply Comments of AdHoc Telecommunications Users Committee (July 29, 2005), filed in *Special Access Rulemaking*, note 1, *supra*, at 4-5.

> BOCs for the past several years in their filings with this Commission.[7]

Unfortunately, there has been no sudden and spontaneous eruption of special access competition in the seven months since AdHoc filed its pleadings in the *Special Access Rulemaking*.

Verizon has failed to provide a factual record justifying forbearance

Verizon's petition in this proceeding suffers from the same defect that plagued its earlier filings for special access de-regulation in other proceedings, *viz.,* the lack of factual evidence to support its competitive claims. The petition, admittedly a broad brush "me too" filing in the wake of a virtually identical BellSouth broadband forbearance petition,[8] claims that "broadband competition" for large business customers is "intense."[9] But Verizon's petition proffers no factual showing regarding competition for the special access services used by large business customers. Despite numerous opportunities to supplement the petition, Verizon has failed to introduce any persuasive evidence that supports its claims of "intense" competition for the special access services it now seeks to de-regulate.

In its February 7 *ex parte* letter,[10] filed nearly fourteen months after the petition was filed, twelve months after the pleading cycle closed, and with a little over a month to go before the statutory deadline for resolving its petition expires, Verizon claims to provide market share data as evidence of competition for the services at issue in the forbearance petition. But Verizon's market share evidence is based upon nationwide data; the forbearance it seeks is for in-region exchange access services, for which nationwide market share data is irrelevant as a measure of market power. As a result, Ad Hoc challenges both the relevance and veracity of Verizon's factual showing, a showing that purposefully

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[7] Attachment 1, Comments of AdHoc Telecommunications Users Committee (June 13, 2005),), filed in *Special Access Rulemaking*, note 1, *supra*, at 7.

[8] *Petition of BellSouth Telecommunications Inc. for Forbearance Under 47 U.S.C. §160(c) from Application of Computer Inquiry and Title II Common Carriage Requirements*, WC Docket No. 04-405 (filed Oct. 27,2004) ("*BellSouth Petition*").

[9] Verizon Petition at 7.

[10] Letter from Edward Shakin, Vice President and Associate General Counsel, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, February 7, 2006 ("*Verizon February 7 Ex Parte*")

confuses both geographic and product markets and describes one market while seeking forbearance in another.

In its petition, Verizon seeks forbearance for the "Verizon Telephone Companies" ("VTCs"), defined as "the affiliated local telephone companies of Verizon Communications, Inc."[11] The rates, terms, and conditions for the "broadband" services at issue are in the VTCs' interstate access service tariffs (Tariff F.C.C. Nos. 1, 11, and 16) and in Tariff F.C.C. No. 20, Verizon's so-called "broadband data service" tariff. All four tariffs offer both wholesale and retail services and all include the dedicated loops that connect customer premises with Verizon's wire centers. These special access services have been the subject of AdHoc's repeated filings with the Commission opposing de-regulation[12] because Verizon maintains significant market power throughout its footprint in the provision of these services. It is these Verizon-provided services – integral components of every service for which Verizon now seeks forbearance – that distinguish Verizon's offering from those of the "competitors" it claims to have in its petition and associated *ex parte* filings.

As Figure 1 below illustrates, the special access services market for which Verizon now seeks forbearance is but a small part of the overall enterprise services market. Verizon could be the only provider of services in this segment, with a 100% market share, and it would still have only a small fraction of the nationwide services market.

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11 Verizon Petition at 1, n. 1.

12 *See* note 1, *supra*, and accompanying text.

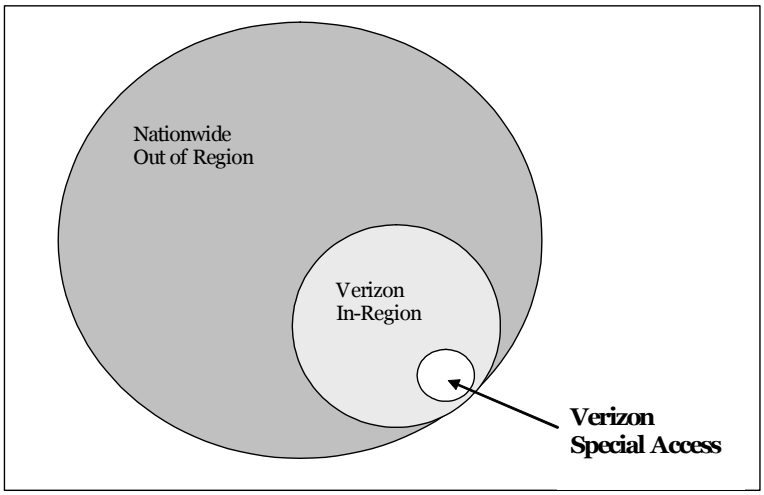

Figure 1

Yet the supposed evidence of competition in the *Verizon February 7 Ex Parte* – the "studies" upon which it principally relies – are based on an analysis of the nationwide market for enterprise customer services. The first study (Attachment 2 to the *Verizon February 7 Ex Parte*) is a November, 2003 Lehman Brothers Equity Research Report entitled "Enterprise Telecom: A Comeback Begins." The second (Attachment 3 to the *Verizon February 7 Ex Parte*) is a Verizon "Internal" Share estimate developed by the Market Strategy and Intelligence (MS&I) group within Verizon Business..[13]

Both studies focus specifically upon a market in which the Commission already forbears from regulating Verizon, namely the market for services offered by the Verizon Business division of Verizon Corp, not by the VTCs, for which Verizon is already classified as non-dominant. That market includes not only the exchange access services that are the subject of Verizon's petition, but also the totality of other business telecom services, including:

- wholly out-of-region services,
- services that traverse between Verizon's in-region and out-of region areas,
- wholly in-region inter-state and interLATA services, and
- the access service offerings that are the subject of Verizon's petition.

[13] The various other industry "reports" cited in the *Verizon February 7 Ex Parte* at footnotes 9, 13, and 14 suffer from the same infirmity – they analyze the nationwide market, not the markets for special access.

The first study does not even include Verizon in the universe of carriers under analysis. The report states that "[w]ithin our Enterprise Telecom Services coverage universe, we include telecom carriers that derive more than 50% of their total revenues from Commercial Users."[14] That would limit the universe of carriers to interexchange carriers and CLECs.[15] Verizon and the other BOC's were not specifically analyzed, and not because they did not have market share or market power – they simply were not the subject of this particular piece of equity research. In fact, in "segmenting" the Enterprise Telecom Market, the report notes that the "SME" (Small and Medium Enterprise) market is "dominated by RBOCs and LECs" but does not provide any analysis beyond that.[16] This is because the purpose of the research was to examine the potential profitability of investments in the firms in Lehman's Enterprise Telecom Segment (specifically, AT&T (pre-SBC merger), MCI (pre-Verizon merger), Sprint and Level 3), not to evaluate market share for local telephone company access operations.

Verizon also misrepresents the data in the study, stating that "the Lehman Report estimates that, for 2005, Verizon's and MCI's combined share of all services provided to enterprise customers was 22 percent."[17] In fact, that part of the Lehman report, issued in 2003, was only a *forecast* of what Lehman thought the nationwide market shares for individual carriers might be in two years, not an "estimate" of what it "was."

Moreover, the report was based on 2003 data. Verizon did not even have full 271 authority allowing it to participate in all segments of the nationwide market until mid-2003. In other words, as "evidence" that supports its Petition for regulatory forbearance for access services in 2006, Verizon is trying to pass off retail market share data from 2003 -- a period in which it was not even fully operational in the long distance markets covered by the report.

The Verizon "internal share" analysis included as Attachment 3 and discussed at pages 11-12 of the February 7 *ex parte* filing, is similarly flawed in its focus upon nationwide markets. Verizon's description of the methodology it

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14 Verizon Petition, Attachment 2 at page 2.

15 Commercial revenues from Verizon and the other BOCs were included in the total enterprise revenue figures, but the BOCs' performance was not analyzed or discussed. Verizon Petition, Attachment 2 at 3.

16 Verizon Petition, Attachment 2 at 3.

17 *Verizon February 7 Ex Parte* at 11.

used paints a detailed picture of a carefully documented and calibrated study. But regardless of how carefully the study may have been done, it can provide no evidence of market share or market power in the special access services market. Verizon specifically notes that its tool (designed in 2002) determines "each company's *national* revenue share."[18] Moreover, Verizon is seeking forbearance for services that include as a primary component the dedicated access line market over which it has a virtual monopoly.[19] Yet the "providers" included in its national market are not only providers of *access service* (LECs and CLECs) but *equipment providers, systems integrators, and IP applications providers*, none of whom is an interstate access provider.[20] Many of these "providers" are purchasers of Verizon's services, incorporating Verizon's offering into a larger package of services being sold to their customers or using Verizon's access service as an input to the production of their products (in the case of IP applications providers).

Verizon also states that "because the bulk of Verizon's market share for these services derives from MCI's customer base, which is spread throughout the country, these data indicate that Verizon's data is not significantly different within its own local footprint than for the nation as a whole."[21] This conclusion is wrong as a matter of simple logic. First, by looking at data on a "nationwide basis," it is impossible to draw any conclusions relative to Verizon's in-region versus out-of region market-share. Secondly, and more importantly, Verizon is seeking forbearance for special access services, *i.e.,* services offered by the VTCs, not the services offered through the MCI customer base. In addition, the Verizon Petition was initially filed in late 2004 – two month's before its planned acquisition of MCI was announced, and thirteen months before the acquisition was actually implemented. The acquisition of MCI certainly did nothing to reduce Verizon's market share in the provision of local access facilities.

Finally, Verizon proffers no support for its assertion that "substantial deployment of competitive fiber"[22] justifies forbearance for the special access services at speeds greater than DS3, nor is that claim supported by the record in

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18 Verizon Petition, Attachment 3 at 1 (emphasis added).

19 *See* Attachments 3 and 4 to this letter, filed as attachments to the Comments and Reply Comments of AdHoc Telecommunications Users Committee (June 13, 2005 and July 29, 2005) filed in the *Special Access Rulemaking,* note 1, *supra,* and attached hereto as Attachments 1 and 2.

20 Verizon Petition, Attachment 3 at 1.

21 *Verizon February 7 Ex Parte* at 12.

22 *Id.* at p. 10.

any of the proceedings that have considered similar competitive issues for these services. "Substantial deployment" is not the same as ubiquitous deployment, particularly where the substantial deployment is geographically concentrated within a metropolitan area. For customers outside the area of concentration, the substantiality of the deployment is cold comfort.

Indeed, Verizon itself has demonstrated that competition for high-speed optical services does not extend to all Verizon customers, even in metropolitan areas where some competitive deployment of high-speed optical services has occurred. In the *TRO Remand Proceeding*,[23] Verizon filed in 2004 an extensive collection of maps documenting where CLEC fiber does and does not run throughout Verizon's operating territory.[24] By way of example, Attachment 6 contains Verizon's maps for the Washington, D.C. and Boston, MA metropolitan areas. Those maps demonstrate that, while fiber may be readily available in certain portions of downtown metropolitan areas, it is not available anywhere else – even areas that are densely populated, business-intensive neighborhoods. This is confirmed by the filings made by (pre-merger) AT&T witnesses in that same docket. They reveal just how limited the competition is and document the difficulties and expense inherent in CLEC attempts to reach customers in buildings that are not already served by CLEC fiber.[25]

The Commission itself has recognized that competitive fiber deployment is unlikely to all buildings in Verizon territory. As the Commission observed in the Verizon/MCI merger order:

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[23] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 04-313, 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) ("*TRO Remand Proceeding")* (subsequent history omitted).

[24] Letter to Marlene H. Dortch, Secretary, FCC, from Susanne Guyer, Verizon, *TRO Remand Proceeding* (filed July 19, 2004).

[25] *See* declarations of AT&T witnesses filed as attachments to AT&T's October 4, 2004 Initial Comments filed in *Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 04-313, 01-338. Specifically, Attachment B: Declaration of Benway, Holleron, King, Lesher, Mullan & Swift; Attachment D: Declaration of Fea & Giovannucci, Attachment F: Declaration of Selwyn. *See also* declarations of AT&T witnesses filed as attachments to AT&T's October 19, 2004 Reply Comments filed in *Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 04-313, 01-338. Specifically Attachment A: Benway-Lesher-Dionne, Attachment B:Fea, Attachment C:Giovannucci, and Attachment D:Selwyn, filed October 19, 2004

> The record also indicates that, for many buildings, there is little potential for competitive entry, at least in the short term. As the Commission has previously recognized, carriers face substantial fixed and sunk costs, as well as operational barriers, when deploying loops, particularly where the capacity demanded is relatively limited. Given these barriers, it appears unlikely that a carrier would be willing to make the significant sunk investment without some assurance that it would be able to generate revenues sufficient to recover that investment. Consistent with this analysis, there is evidence in the record that carriers generally are unwilling to invest in deploying their own loops unless they have a long-term retail contract that will generate sufficient revenues to allow them to recover the cost of their investment. Moreover, even where there is adequate retail demand, the costs of constructing the loop may be sufficiently high, or there may be other operational barriers, that may deter entry.

Verizon/MCI Merger Proceeding, note 1, *supra*, at para. 39 (footnotes omitted).

Thus, it is clear that for many, indeed likely most, enterprise customer locations in buildings that do not sit directly upon CLEC fiber that has already been constructed, the barriers to entry are simply too high for effective competition to develop. To accurately assess Verizon's market power in the provision of high-speed optical services, the Commission would need information on a building by building basis regarding competitive fiber deployed in the area. Verizon has failed to provide that evidence in this docket.

Contrary to the *February 7 Ex Parte*, Verizon's forbearance request includes lower capacity services such as DS1 and DS3

Verizon claims that its forbearance request does not include "services at DS1 or DS3 speeds,"[26] *i.e.,* the special access services that the Commission recognizes as the least competitive. In fact, however, those services *are* included in Verizon's forbearance request because it has tariffed them as components of the services for which it seeks forbearance. The list of services at Attachment 1 of the *February 7 Ex Parte* purports to identify the services for which Verizon seeks forbearance. The list includes frame relay service, ATM, IP-VPN, and Transparent LAN Service. Verizon has tariffed these services in

[26] Verizon Petition at 3.

Section 5 of its Tariff F.C.C. No. 20. Attachment 5 of this letter consists of the relevant pages from Verizon's tariff that describe these services. According to the tariff pages, one of the service components included in each service is a "UNI Port with Access Line Connection," which is the DS1 or DS3 loop (or a loop at other speeds) between the customer's premises and Verizon's wire center or service hubs. The relevant language is highlighted in Attachment 5. Verizon's *February 7 Ex Parte* simply misrepresents the services covered by Verizon's forbearance petition.

Enterprise customer concerns

Based on the flimsy factual record in this proceeding and the Commission's disposition of special access issues in proceedings resolved after Verizon filed its petition, AdHoc agrees with substantially all of the positions taken by opponents of the petition. Instead of reiterating those positions, AdHoc will address three issues that are particularly troubling to enterprise customers.

First, and consistent with the apparent impetus for the filing as a gimmick to turn up the heat on broadband issues before the Supreme Court's *Brand X* decision[27] and the Commission's *Wireline Broadband Internet Access Order*,[28] the petition makes a breezy and unrefined request for comprehensive relief from all of Title II and the *Computer II/III* rules. The petition does not specify particular statutory provisions and regulations for which Verizon seeks forbearance or proffer any analysis under the Section 10 forbearance standard relevant to those provisions, beyond general assertions that competition in the special access market obviates the need for regulation. But Title II contains requirements that have no relationship to marketplace competition. Section 229, for example, authorizes the Commission's to enforce its implementing regulations for CALEA. Verizon does not explain how competition would ensure CALEA compliance or how the public interest would be served if the Commission forbore from enforcing its CALEA regulations.

Second, the petition fails to specify the services for which Verizon seeks forbearance. Verizon did not provide that information until its February 7, 2006

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[27] *National Cable & Telecomms. Ass'n v. Brand X Internet Services*, 125 S. Ct. 2688 (2005).

[28] *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket Nos. 02-33, 95-20, and 98-10, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) ("*Wireline Broadband Internet Access Order*").

ex parte letter. By failing to identify the services for which it seeks forbearance in a timely manner, Verizon has denied interested parties adequate notice and opportunity to comment and has severely compromised the FCC's ability to adequately evaluate Verizon's petition.

Verizon's *ex parte* also offers a proposal for refining its request. Verizon claims that the Commission could exclude "TDM-based services" from the definition of broadband and thereby "address any concerns that granting the requested relief would undermine the availability of traditional TDM-based special access services used to serve business customers."[29] This proposal is nonsensical because the distinction is meaningless. Business customers do not buy, *nor does Verizon offer in its tariffs,* any class of service called "TDM service." Time division multiplexing is simply a technology that enables Verizon to transmit multiple signals simultaneously over a single transmission path. It is used, for example, to convert 24 voice grade analog channels into one digital T1, which Verizon may choose to do for one customer or multiple customers as a means of optimizing its network performance. Whether or not Verizon uses TDM for a particular traffic stream can be entirely transparent to the customer. Verizon implies that "traditional TDM-based special access" is different from packet services like frame relay or IP-VPNs. But customers can (and do) buy a single T1 connection under Verizon's special access tariff to transmit both traditional voice services, which may use TDM, and Internet access traffic, formatted as IP. Surely Verizon is not proposing that the same circuit be both regulated and unregulated simultaneously.

Verizon's suggestion that the FCC could "carve out"[30] TDM from all other special access is specious not only as an engineering matter but also as a matter of competitive analysis; Verizon is confusing technology differences with competitive differences. Whether Verizon's transmission protocol for a facility is TDM or IP or DWDM provides no basis for determining when a service is available on a competitive bases, and therefore may be a candidate for forbearance.

Finally, Verizon's continuing pursuit of the forbearance outlined in its petition is inconsistent with actions taken by the Commission subsequent to the filing of Verizon's petition. The relief it requests has simply been overtaken by events. Unlike its fellow BOCs who withdrew their petitions seeking equivalent

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29 *Id.* at 2.

30 Verizon Reply Comments (March 10, 2005) at 8 n.21.

forbearance, Verizon has perversely left its petition in place, the vestige of an obsolete strategy for extracting broadband de-regulation from the Commission without regard to market conditions. The forbearance Verizon seeks in its petition would nullify subsequent Commission action that responds to enterprise customer concerns over Verizon's excessive rates and exploitation of its special access market power, such as:

- Conditions imposed in the Verizon/MCI merger proceeding which froze special access rates for a period of 30 months
- The exclusion of special access services from the scope of the Wireline Broadband Internet Access Order[31]
- The initiation of the *Special Access Rulemaking* to re-examine the factual assumptions and competitive predictions underlying the special pricing flexibility rules

Accordingly, the FCC cannot abdicate its statutory responsibility to protect competition and consumers by granting the forbearance Verizon seeks, particularly on the strength of the paltry factual record Verizon has assembled. The Commission must instead ensure that its regulatory regime for special access accurately reflects the state of competition in today's special access marketplace. Indeed, at the specific urging of Ad Hoc and other parties before the FCC and the U.S. Court of Appeals for the D.C. Circuit[32], the Commission initiated a rulemaking, which it has not yet completed, to revisit its "pricing flexibility" experiment and revise its rules as necessary in light of current market conditions. That proceeding should be the focus of the Commission's efforts in the special access marketplace.

Sincerely,

Colleen Boothby

Susan M. Gately
Economics and Technology, Inc.

Economic Consultant

Colleen Boothby
Counsel for
Ad Hoc Telecommunications Users Committee

[31] *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, note 23, *supra*.

[32] *In re* AT&T Corp., note 2, *supra.*

Attachments (6)

cc: S. Bergman
B. Childers
G. Cohen
R. Crittendon
W. Dever
I. Dillner
S. Feder
D. Furth
A. Goldberger
J. Kaufman
W. Kehoe
C. Killion
M. Maher
J. May
J. Miller
T. Natoli
T. Navin
T. Preiss
J. Rosenworcel
C. Seidel
D. Shaffer
D. Stockdale
J. Veach